NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C.

99TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-601

AMENDING THE DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985, TO PROVIDE THAT MEMBERS OF THE COMMISSION ON MERCHANT MARINE AND DEFENSE SHALL NOT BE CONSIDERED TO BE FEDERAL EMPLOYEES FOR CERTAIN PURPOSES, TO EXTEND THE DEADLINE FOR REPORTS OF THE COMMISSION, AND TO EXTEND THE AVAILABILITY OF FUNDS APPROPRIATED TO THE COMMISSION

MAY 13, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. BENNETT, from the Committee on Armed Services, submitted the following

REPORT

[To accompany H.R. 4530]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 4530) to amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

PURPOSE

The purpose of H.R. 4530 is to amend section 1536 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2633) to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports

71-006 O

H203-4

of the Commission and to extend the availability of funds appropriated to the Commission.

BACKGROUND

The Commission on Merchant Marine and Defense was created nearly two years ago to recommend comprehensive solutions to the problems of providing a merchant marine adequate to meet national defense needs. The Commission has been unable to begin its work because the members of the Commission (other than the Secretary of the Navy and the Maritime Administrator) have not been nominated by the President. This is apparently because of a White House staff view that otherwise qualified individuals might have potential problems with existing Federal conflict of interest statutes by virtue of their service as Commission members. Indeed, it was the committee's intent in creating the Commission that its members be individuals of recognized stature, distinction, and experience in the martime and defense fields.

In addition, because these members of the Commission have not been nominated and the Commission has yet to begin its work, both the reporting dates for the Commission and the availability of appropriations provided in the original legislation (and subsequently extended by the Department of Defense Authorization Act, 1986 (Public Law 99-145)) must be extended further.

SUMMARY OF PROVISIONS OF BILL

Status of commission members

H.R. 4530 would remove the impediment of potential conflict of interest by providing that members of the Commission would not be considered Federal employees for most purposes and therefore would not be subject to conflict of interest statutes relating to Federal employees.

There are at least three other instances where such an exemption is provided in law. Title 10 already contains two cases: 10 U.S.C. 1588(b) dealing with individuals providing volunteer services to a military department, and 10 U.S.C. 2360(b) relating to students providing contract services at defense research and development laboratories. The same exemption is also provided to the Commissioners to the Convention for the Conservation of Salmon in the North Atlantic Ocean under the Atlantic Salmon Convention Act of 1982 (16 U.S.C. 3601).

Extensions

So that the Commission will have adequate time to complete its work according to the schedule in the original legislation H.R. 4530 would amend the beginning of the Commission's working life to the date on which a sufficient number of members of the Commission to constitute a quorum have been appointed. Similarly, availability of appropriations would be amended to cover the 36-month period after sufficient members to constitute a quorum have been appointed.

SECTION-BY-SECTION ANALYSIS

Section 1(a) of the bill would amend section 1536 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2633) to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees except for the purposes of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries; and chapter 171 of title 28, United States Code, relating to tort claims.

Section 1(b) of the bill would further amend section 1536 to extend the deadline for reports of the Commission and to extend the availability of funds appropriated to the Commission.

DEPARTMENTAL VIEWS

This legislation was introduced at the suggestion of the White House staff.

VIEWS OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

The committee received the following letter concerning the bill from the Committee on Merchant Marine and Fisheries and provided the following reply:

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC, May 5, 1986.

Hon. LES ASPIN,
Chairman, Committee on Armed Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: It is our understanding that H.R. 4530, a bill to amend the Defense Authorization Act of 1985, will be marked up this week and prepared for expeditious treatment by the House. This bill is necessary to provide that members of the Commission on Merchant Marine and Defense be exempt from the conflict of interest provisions imposed on federal employees, to extend the deadline of the issuance of the Commission's report, and to extend funding availability beyond the time authorized the Commission under the terms of the Appropriations Bill.

We are certainly aware of the need for this measure, which is made necessary by the delay in the President's nomination of Commission members. We continue to urge the Administration to respond affirmatively to the urgent need to quantify the role of the merchant marine in aid of defense requirements.

As you recall, the legislation creating the Commission was agreed between us to be within the jurisdiction of the Committee on Merchant Marine and Fisheries as well as the Committee on Armed Services. For the sake of expediency and comity, we are not pursuing a request for referral of H.R. 4530, but we do so with no prejudice to any future interest in or jurisdiction of this measure. It is my understanding, based on discussions between our staffs,

that this approach is agreeable to you, and we look forward to your early response agreeing to proceed as indicated in this letter.

With best wishes, I am

Sincerely,

WALTER B. JONES,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, May 9, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine & Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter concerning H.R. 4530, a bill relating to the Commission on Merchant Marine and Defense. The committee recognizes that the legislation creating the Commission on Merchant Marine and Defense was within the jurisdiction of the Committee on Merchant Marine and Fisheries as well as the Armed Services Committee. Your agreement not to seek sequential referral of H.R. 4530 is greatly appreciated and may allow earlier consideration of the bill by the House.

It is our intention to place H.R. 4530 on the consent calendar with the expectation that it will be considered in the House on Monday, May 19, 1986.

Sincerely,

LES ASPIN,
Chairman.

COMMITTEE POSITION

The Committee on Armed Services, on May 7, 1986, a quorum being present, by voice vote, approved H.R. 4530.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 1986.

Hon. LES ASPIN,
Chairman, Committee on Armed Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to correct and clarify our previous estimate of the costs of H.R. 4530, a bill affecting the Commission on Merchant Marine and Defense. Our earlier estimate incorrectly assigned the costs of the bill to fiscal year 1987. Under current law funds are available to the Commission through September 30, 1988. The Budget Committee's scorekeeping rules for extension of availability would assign any extension to fiscal year 1989—the first year of new availability.

We have also learned that by the end of 1988 at least $700,000 will have been obligated leaving less than $1 million as the cost of this bill. In fact, it is possible that this bill would have no cost impact if in its absence the Administration appointed members to the Commission and they completed their work before 1989.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 12, 1986.

Hon. LES ASPIN,
Chairman, Committee on Armed Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate on H.R. 4530, a bill clarifying the status of members of the Commission on Merchant Marine and Defense and extending the availability of funds, as ordered reported by the Committee on Armed Services on May 7, 1986.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: H.R. 4530.

2. Bill title: A bill to amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission.

3. Bill status: As ordered reported by the House Committee on Armed Services on May 7, 1986.

4. Bill purpose: This bill would prevent members of the commission from being governed by conflict of interest laws affecting federal employees. It doe not affect their compensation. Also, the bill extends the authorization of approprations until 36 months after the date on which a quorum has been appointed.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dolars]

	1987	1988	1989	1990	1991
Authorization level	1.5	0	0	0	0
Esimated outlays	1.5	0	0	0	0

Costs for this bill fall within budget function 050.

Basis for estimate: The estimate assumes that the bill is enacted before October 1, 1986 and that appropriations are provided to the full amount of the authorization.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None:

8. Previous CBO cost esimate: None.

9. Estimate prepared by: Michael A. Miller.

10. Estimate approved by C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Committee Cost Estimate

The committee concurs with the estimate of the Congressional Budget Office.

Inflation-Impact Statement

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the committee attempted to determine the inflationary impact of the bill.

The committee believes no precise method exists to identify a discrete inflationary impact of the present legislation.

However, in view of the estimate prepared by the Congressional Budget Office that the bill would have no quantifiable cost, the committee concludes that the bill will have no significant inflationary impact.

Oversight findings

With reference to clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 1536 of the Department of Defense Authorization Act, 1985

COMMISSION ON MERCHANT MARINE AND DEFENSE

Sec. 1536. (a) There is hereby established a commission to be known as the Commission on Merchant Marine and Defense (hereinafter in this section referred to as the "Commission").

(b) The Commission shall study problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the United States merchant marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base of the United States to meet the needs of naval and merchant ship construction in time of war or national emergency. Based on the results of the study,

the Commission shall make such specific recommendations, including recommendations for legislative action, action by the executive branch, and action by the private sector, as the Commission considers appropriate to foster and maintain a United States merchant marine capabable of meeting national security requirements. The recommendations of the Commission shall be provided in the reports of the Commission due 12 months after [the date of the enactment of the law first providing funds for the Commission] *the date on which sufficient members of the Commission to constitute a quorum have been appointed* and 24 months after such date, under subsection (g).

* * * * * * *

(d)(*1*) Members of the Commission appointed under subsection (c)(1)(C) may each be paid at a rate equal to the daily equivalent of the rate of basic pay payable for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of the business of the Commission. Other members of the Commission shall receive no additional pay, allowances, or benefits by reasons of their service on the Commission.

(2) A member of the Commission appointed under subsection (c)(1)(C) (who is not otherwise employed by the Federal Government) shall not be considered to be a Federal employee, except for the purpose of—

(A) chapter 81 of title 5, United States Code, relating to compensation for work-related injuries; and

(B) chapter 171 of title 28, United States Code, relating to tort claims.

* * * * * * *

(g) Not later than nine months after [the date of the enactment of the law first providing funds for the Commission] *the date on which sufficient members of the Commission to constitute a quorum have been appointed* and not later than 21 months after such date, the Commission shall submit to the President and to Congress a report containing its findings of fact and its conclusions. Not later than 12 months after such date [of enactment] and not later than 24 months after such date [of enactment], the Commission, based upon those findings and conclusions, shall prepare a report containing the recommendations of the Commission as specified in subsection (b) and shall submit the report to the President and Congress. Each such report shall be prepared without any prior review or approval by any official of the executive branch (other than the members and staff of the Commission).

(h) The Commission shall cease to exist 90 days after the date on which the final report of the Commission under subsection (g) is submitted to the President and the Congress.

(i) There is authorized to be appropriated for fiscal years 1985, 1986, and 1987, a total of $1,500,000 to carry out this section. Any amount appropriated under this subsection shall remain available until [September 30, 1988] *36 months after the date on which sufficient members of the Commission to constitute a quorum have been appointed.*

SUMMARY

Purpose

The purpose of H.R. 4530 is to amend section 1536 of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2633) to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission.

Fiscal data

The Congressional Budget Office estimates that the bill would have no fiscal impact in fiscal year 1987 or 1988 and that, "it is possible that the bill would have no cost impact if in its absence the administration appointed members to the Commission and they completed their work before 1989."

Departmental data

This legislation was introduced at the suggestion of the White House staff.

Committee position

The Committee on Armed Services, on May 7, 1986, a quorum being present, by voice vote, approved H.R. 4530.

○